

# INTERNATIONAL INTELLECTUAL PROPERTY ALLIANCE

## 2008 SPECIAL 301 REPORT

### PARAGUAY

**Special 301 Recommendation:** IIPA recommends that Paraguay remain under Section 306 monitoring in 2008.

## EXECUTIVE SUMMARY

Meaningful change in reducing piracy in Paraguay did not occur in 2007--not in the streets, not in Ciudad del Este, not in reducing the transshipment of pirated products or raw materials to other countries. IIPA members report continued cooperation with key Paraguayan authorities in 2007, the all-too-familiar problem of good intentions and poor results continues. Large-scale importation of blank media, along with local production and distribution of pirated goods remains almost unchecked. Corruption and an ineffective judicial system are recurrent problems. One bright spot is that the special anti-piracy unit (UTE) did conduct several high-impact raids in 2007. It is imperative that Paraguay adopt changes to its criminal code so that deterrent sentencing in criminal copyright piracy cases is possible. More judicial training on IPR enforcement and the adoption of sentencing guidelines is direly needed. IIPA supports the renewal of the bilateral Memorandum of Understanding on Intellectual Property Rights (IPR MOU) which will be in force through 2009. IIPA recommends that the U.S. government maintain close consultations on progress being made on-the-ground in Paraguay regarding new MOU commitments. Protecting and enforcing copyrights must be elevated to a national priority; the vast scale of piracy is devastating the economy and thoroughly undermining the rule of law.

## PRIORITY ACTIONS IN 2008

### Enforcement

- Improve border enforcement, including (a) the interception and seizure of piratical and counterfeit goods, (b) the interception and seizure of contraband PC hardware, and (c) the inspection of blank optical disc media.
- Investigate and conduct raids against the large-scale distribution points operating in Ciudad del Este, including addressing the role of landlords with respect to the open and notorious illegal activities taking place on their premises.
- Impose deterrent remedies against pirates, including criminal penalties.
- Audit large-scale importers of blank CD-Rs who are suspected suppliers of pirate organizations for possible tax evasion. Pursue audits of customers of those importers. Tax authorities should consider creating a specialized unit familiar with the business of optical media and other exportable products.
- Improve training for officials in the UTE, the special IP task force, and provide sufficient resources for UTE to hire, train and maintain its inspectors.
- Improve training for prosecutors and judges in order to improve effective deterrence against criminal copyright piracy.
- Request that the Supreme Court suspend and/or remove expert witnesses and judges reported to be involved in corruption cases from current dockets.
- Create a specialized IPR court.
- Ease regulations for the destruction of seized evidence. As it stands now, destruction procedures are very expensive because they require high court fees from the complainants for each individual case instead of pooling them together.

## Legislation

- Pass legislation to amend Article 184 of the criminal code to increase penalties for copyright infringement (designating IPR violations as major crimes), establish *ex officio* actions, and criminalize the circumvention of technological protection measures.
- Issue and implement a software legalization decree (long overdue from previous IPR MOU).
- Halt further consideration of possible development of a regulatory decree (or other legislation) which would detrimentally interfere with collective rights management.

<b>PARAGUAY</b>										
<b>Estimated Trade Losses Due to Copyright Piracy</b>										
<b>(in millions of U.S. dollars)</b>										
<b>and Levels of Piracy: 2003-2007<sup>1</sup></b>										
INDUSTRY	2007		2006		2005		2004		2003	
	Loss	Level								
Sound Recordings & Musical Compositions <sup>2</sup>	128.0	99%	128.0	99%	128.0	99%	127.8	99%	154.6	99%
Business Software <sup>3</sup>	6.0	81%	6.0	82%	6.0	83%	6.0	83%	5.0	83%
Entertainment Software <sup>4</sup>	NA	NA	NA	98%	NA	NA	NA	NA	NA	NA
Books	NA	NA	2.0	NA	2.0	NA	2.0	NA	2.0	NA
Motion Pictures <sup>5</sup>	NA	NA	NA	NA	2.0	86%	2.0	95%	2.0	80%
<b>TOTALS</b>	<b>134.0</b>		<b>136.0</b>		<b>138.0</b>		<b>137.8</b>		<b>163.6</b>	

**The IPR Memorandum of Understanding and Action Plan:** Both the Paraguayan and the U.S. governments have invested years of effort to improve the Paraguayan system. On December 19, 2003, both countries agreed on a Memorandum of Understanding on Intellectual Property Rights (IPR MOU). The IPR MOU was extended through 2007. Unfortunately, Paraguay has not met the objectives of this original IPR MOU to date in several ways, including:

- Failing to significantly reduce the levels of copyright piracy;
- Not increasing criminal penalties available for and applied in criminal copyright cases through legislative changes;
- Not strengthening deterrence by requiring imposition of mandatory minimum prison sentences on offenders convicted of manufacturing, importing or distributing commercial quantities of pirated or counterfeit goods;

<sup>1</sup> The methodology used by IIPA member associations to calculate these estimated piracy levels and losses is described in IIPA's 2008 Special 301 submission at [www.iipa.com/pdf/2008spec301methodology.pdf](http://www.iipa.com/pdf/2008spec301methodology.pdf). For information on the history of Paraguay under Special 301 review, see Appendix D at (<http://www.iipa.com/pdf/2008SPEC301USTRHISTORY.pdf>) and Appendix E at (<http://www.iipa.com/pdf/2008SPEC301HISTORICALSUMMARY.pdf>) of this submission.

<sup>2</sup> RIAA reports that its estimated piracy losses include both domestic piracy in Paraguay and estimated losses caused by transshipment. The decrease in 2003 and 2004 estimates are due to lower average prices of recorded music and currency devaluation.

<sup>3</sup> BSA's 2007 statistics are preliminary. They represent the U.S. software publishers' share of software piracy losses in Paraguay, and follow the methodology compiled in the Fourth Annual BSA and IDC Global Software Piracy Study (May 2007), available at <http://w3.bsa.org/globalstudy/>. These figures cover, in addition to business applications software, computer applications such as operating systems, consumer applications such as PC gaming, personal finance, and reference software. BSA's 2006 piracy statistics were preliminary at the time of IIPA's February 12, 2007 Special 301 filing and were finalized in June 2007 (see <http://www.iipa.com/statistics.html>) as reflected above.

<sup>4</sup> ESA's estimated piracy rates for Paraguay in 2006 reflect on the piracy rate for handheld products, which may differ from and often underestimate overall piracy levels in country. ESA's reported dollar figures reflect the value of pirate product present in the marketplace as distinguished from definitive industry "losses."

<sup>5</sup> MPAA's trade losses and piracy levels for 2006 and 2007 are not available. MPAA did provide 2005 estimates for a select group of countries, using a new methodology that analyzed both physical/"hard goods" and Internet piracy. Details regarding MPAA's methodology for 2005 and prior years are found in Appendix B of this IIPA submission.

- Not providing for the seizure of an infringer's assets upon conviction for commercializing pirate product; and
- Not finding ways to work with the judiciary to promptly resolve pending cases.

IIPA and its members requested heightened consultations during 2007 in advance of any renewal of this IPR MOU, urging the Government of Paraguay to meet its MOU commitments. In December 2007, both governments initialed a new MOU and Action Plan, thus extending their cooperation on IPR issues until the end of 2009. The text will be signed and made publicly available in 2008.

## **COPYRIGHT PIRACY IN PARAGUAY**

Widespread piracy at the borders and in the streets remained a serious problem in Paraguay, with no significant improvements to report in 2007. Internet piracy is beginning to infiltrate this market.

**Optical media piracy, border measures and transshipment:** Paraguay continues to serve as a favorite destination for much of the pirated optical media product produced in Southeast Asia (e.g., Malaysia, Macau, Hong Kong, Singapore, and Taiwan). In addition, Paraguay remains a significant transshipper of pirate products and optical media to its neighbors, especially Brazil.

Pirates continue to shift their products from pre-recorded optical disc product to importing blank recordable CDs (CD-Rs) into Paraguay. Around 30% of all importation of blank media come from two major manufacturers. Most of this product comes from Southeast Asia (Taiwan and China) and almost all of it is destined for pirate production of music, movies and software to be sold in Brazil. The amount of optical medial product legally imported into Paraguay decreased in 2007, compared to 2006. The year-end estimate for 2007 for legally declared imports of compact discs (including CDs and DVDs) was 90 million units, according to the RISMOMP, the Office of the Ministry of Industry and Commerce overseeing imports of optical discs.<sup>6</sup> This lower number is likely due to the optical disc plants operating in Paraguay (see below), which likely lowered their costs and increased their production. Another 100 million units of blank media that had been previously routed through Paraguay are now being diverted to the border between Uruguay and Brazil.

Moreover, the entertainment software industry reports that for 2007, the market remains replete with pirated and counterfeit video games. A survey of the market found that about 70% of the pirated product sold at retail consisted of imported or factory-replicated games on DVD, with the remaining 30% locally produced, burned product. The country also remains a major transshipment point for pirated and counterfeit video games from Asia into South America. In most cases, shipments of pirated entertainment software on optical media originate from Malaysia, while counterfeit cartridge games and components are shipped from China—all for subsequent and further shipment into South America's key markets like Brazil. Shipments of counterfeit cartridge games and components, for example, have been seized in the U.S. and in Uruguay, with Paraguay as the destination country. Border enforcement efforts must also focus on counterfeit game cartridges, game components and console game discs, for which the volume of suspect shipments is also as significant as optical disc products. In addition, there remains a big problem with increasing illegal importation of computer hardware parts and components, which are then assembled into computers and frequently loaded by system builders and assemblers with illegal business software. Much of this contraband hardware arrives in Paraguay, and then enters Brazil, Argentina and Uruguay.

As if the excessive levels of imported blank media were not a severe enough problem, there are five (5) optical disc factories in Paraguay. In recent years, the Paraguayan government authorized and provided incentives to set up four new industrial CD-R and DVD-R plants in Ciudad del Este. These plants have a capacity for the manufacture of 120 million units per year. UTE plans to inspect these plants in February 2008 to determine the new capacity.

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<sup>6</sup> According to UTE calculations, over 360 million units of blank optical media were imported in 2006, but from January to September 2007, only 60 million units were legally imported. This drastic decline in importations is likely due to an increase in national production levels and blank optical media entering as contraband.

In addition to their clandestine industrial CD production capacity, the pirates of Ciudad del Este revised their replication methods. Hundreds of smaller burning labs have replaced the illegal CD plants. Many of these burning facilities are supplied by pirate kingpins who coordinate their work and provide the small labs with blank CD-Rs. These “sprayed” plants serve Paraguayan, Argentine, Uruguayan and (mostly) Brazilian illegal CD-R duplicators.

**Internet Piracy:** Paraguay has only 16,000 broadband subscribers and 260,000 Internet users, (according to Internetworldstats.com). Internet-based piracy has grown mostly because Internet access is becoming more affordable. Cyber cafés have proliferated across the country. Moreover, almost all the computers in these cyber cafes have installed illegal games and software. People use Internet forums and webspaces to offer their products and upload links to free hosting sites such as Megaupload or Rapidshare. In addition, sell-through Internet sites are increasingly hurting local markets.

**Organized crime:** Again in 2007, organized criminal groups remain involved in the production and distribution of pirated and counterfeit product, and/or in the importation and distribution of raw materials. Organized crime elements from Taiwan, the Far East and the Middle East control much of the distribution in Ciudad del Este and in other cities. Some industries continue to report that organized crime elements are working more with smaller labs, making it harder to identify those operations. In 2007, a sizeable amount of Nintendo counterfeit products were seized in Gallery Page, Ciudad del Este, and evidence seized at the raid indicates a possible connection with criminal groups.

**Local Piracy:** The level of piracy in Paraguay remained steady in 2007, at 99% of that market. Recorded CD-Rs/DVD-Rs, and cartridge-based video games are dominant forms of piracy. The legitimate recording market is so small that it is difficult to quantify; only a few stores still sell some legal product. A few local artists produce their own recordings and sell them in CD-R format due to piracy. Hard copies of illegal software continue to be readily available in large quantities in Ciudad del Este.

The book publishing industry continues to report concerns about use of photocopied books in universities and encourages institutions of higher learning to take a more active role to ensure use of legitimate materials by students and lecturers.

The business software industry reports severe problems with end-user piracy, whereby businesses inflict the most economic harm on the potential growth of a legitimate software base in Paraguay. Government implementation of a software legalization decree (required by the original IPR MOU) is long overdue. Furthermore, the Business Software Alliance (BSA) reports a marked change in Internet piracy in Paraguay over last year. The growing Internet piracy problem is changing the marketing and distribution of pirated products. With respect to piracy targeted at corporations, email is used to place orders online, and purchasers obtain the products via a distributor hired by the piratical organization. In addition to commercial software, these groups offer pirated compilations of business software, including those specially tailored to a particular business sector, for example, to engineers, architects, and accountants.

## **COPYRIGHT ENFORCEMENT IN PARAGUAY**

Copyright anti-piracy actions taken by Paraguayan authorities, while well intended, continue to be largely ineffective in deterring widespread piracy. One bright side is that the Specialized Technical Unit (UTE) in the Ministry of Industry and Commerce, has conducted several high-impact raids and has worked well with industry representations on operations and investigations.

In 2007, the UTE seized US\$49 million in pirated products in 74 enforcement actions. Copyright merchandise accounts for an estimated 70% of the value of these seizures. Organized criminal elements make enforcement extremely difficult. Border enforcement remains weak. There are still too few criminal investigations and prosecutions against copyright pirates. Unfortunately, IPR infringements are treated as minor offenses and deterrent penalties are rarely issued because of gaps in the criminal code and copyright law.

The entertainment software industry has undertaken several raids in Ciudad del Este since the inception of its anti-piracy program in early 2007. In mid-2007, a raid against four retail locations and a warehouse resulted in the seizure of about 17,800 pirated games discs and almost 1,000 pirated Nintendo video game cartridges. Another raid yielded 5000 pirated games discs. ESA has also participated in raids conducted by UTE and these raids have resulted in the seizure of a significant amount of pirated product. A later raid against Gallery Page, a well-known center for the sale and distribution of pirated and counterfeit goods in Ciudad del Este, resulted in the seizure over 26,000 pirated games on optical media discs, 203 GameCube mini-game discs, and almost 31,000 inserts for the optical media discs.

**Border enforcement:** The Government needs to combat cross-border piracy and corruption of its agents. In 2007, Paraguayan Customs operations were nearly non-existent; in addition, even enforcement units that have actually undergone polygraph testing continue to experience problems with corruption. The border with Brazil remains wide open and *sacoleiros*, individuals who come to buy counterfeit products to later sell in Brazil, pass easily over the Friendship Bridge. Some border actions taken in early 2007 drove the traffic off the Bridge and into the water, where there are very few patrol boats. In addition, an undetermined amount of merchandise is being trafficked into Brazil through 'dry' border crossings including Pedro Juan Caballero and Salto de Guaira. Tax authorities should conduct strict audits of businesses catering to the *sacoleiro* traffic in Ciudad del Este since tax evasion is rampant. A new recordation process established with the customs authorities was a welcome development, but there must be better cooperation with the Recordation Office when suspect products are found.

Customs operations with industry coordination and the Ministry of Industry and Commerce (MIC) were conducted in 2007. Overall, the relationship with Customs improved and they conducted around 10 meaningful operations. Some were river operations in order to eliminate one of the contraband routes.

In September 2003, the recording industry reached an agreement with customs and the MIC which provides that no blank CD-R shipment will be released until these groups verify that the submitted invoices and documents are valid and accurate. Cooperation improved a great deal and the audit of invoices continues. Importers are aware of the procedure and are now following proper procedures to bring in digital media. Hence the numbers of seizures decreased over last year from 7.5 to 2.5 million units of blank optical discs. The overall reduction in imported units also affected the number of seizures. Customs also helped with an effort to identify administrative and tax violations by some of the CD-R plants. In fact one plant was fined over US\$1 million for tax and reporting irregularities.

One of the major successes involved a raid run by UTE in October 2007 in the infamous pirate market of Paseo San Blas, which is an open mall located at the foot of the Friendship Bridge, which separates Ciudad del Este from Brazil's Foz de Iguacu. In this action, 52 points of sale were targeted, resulting in the seizure of 67,500 music CD-Rs, 123,000 film DVDs and almost 1 million jewel boxes. Earlier that same day, authorities seized a full-scale replication lab, located in the same vicinity, that had 214 active burners and more than 14,000 CD-Rs. This action was part of a program designed by INTERPOL to curb piracy in the Tri-Border area. To avoid pre-raid leaks, the authorities brought in enforcement personnel from Asuncion, and UTE had to overcome some judicial opposition to the lab raid.

BSA reports that it carried out 14 border actions in Ciudad del Este, all of which were done with the support of the UTE. This represents almost twice the number of actions performed in 2006. BSA also notes that their efficacy was improved thanks to the intelligence operations of UTE, which keeps targets under surveillance. Seizures of business software programs in these border actions were worth over US\$4.0 million. In addition, BSA requests that border officials strengthen their monitoring of importers of computer parts.

**Criminal copyright enforcement:** Industry generally reports that cooperation with UTE is very good. Overall, UTE's performance improved during 2007 but it has been very difficult to recruit and retain personnel. UTE could benefit from more training and more competitive wages (their low salaries prompt staff turnovers).

The recording and motion picture industries are represented by APDIF in Paraguay. While APDIF's cooperation with UTE in 2007 was excellent, the number of raids for the year decreased by 49% to 80

operations and the amount of product seized by 58% to 4.9 million units. It is clear that the authorities are not able to maintain the intensity of the campaign without major support from the industries.

According to local legislation, piracy is a crime to be pursued *ex officio*. However, IFPI reports that 70% of the anti-piracy operations are initiated by complaint of the industry. This is largely due to the high level of corruption in the National Police. In 2007, the recording industry supported efforts to conduct 80 raids, which resulted in the seizure of over 4.9 million units of infringing products (mostly music CDs) and the closure of 13 manufacturing facilities, most of them small to mid-sized CD-R replication facilities, and 37 storage facilities of different sizes. In 2006-2007, the revised business model for pirates changed from large-scale operations to loosely knit, small-scale groups. Identifying and immobilizing these organizations has become more difficult. The more sophisticated criminals involved in optical disc piracy have adopted the "cell" structure of operations.

BSA reports that the authorities remain cooperative with industry officials on both criminal and civil cases during 2007, and this includes the MIC, the General District Attorney, the Network Investment and Export of Paraguay (REDIEX), and the UTE. BSA launched a national public awareness campaign called "Don't put your business at risk" in October 2007. Some 3,600 letters were sent to local companies and businesses to inform them about the benefits of using legal software. As a result, 14 border raids took place in Ciudad del Este, seizing merchandise for US\$4 million. There were also undercover procedures made in Asuncion, brought against illegal distributors of computers that were fully loaded with unlicensed software. Eight people are formally linked with these cases, two of them with previous criminal records related to intellectual property infringements. Additional actions were taken in support of the "First Day Of Regional Fair Play On Technology", held on December 5, 2007, which consisted of joint investigations by the police, the District Attorney's office (Ministerio Publico), the UTE, and software companies conducted, simultaneously, in ten states.

**Internet Enforcement:** In 2007, BSA conducted a raid against one Internet pirate who operated internationally. This defendant offered franchises supplying pirated software products targeted at specific professions (e.g. architecture, medicine, law). In this action, 213 pirated DVDs were seized, many that were used as masters for these "special packages" of programs. Such packages often included four or five DVDs. This criminal case is still in the investigation phase in the prosecutor's office.

**Few prosecutions and non-deterrent sentences:** The recording industry reports that prosecutors are offering a good level of cooperation, but corruption concerns remain with the prosecutors and prosecutor assistants in Ciudad del Este. There are still nine specialized IPR prosecutors (each unit usually consisting of one prosecutor and two assistants) in Paraguay, four in Asunción and five in Ciudad del Este (where they are also in charge of tax evasion cases.) The prosecutors now have the ability to pursue copyright infringement cases as "public" actions (thanks to Law No. 1.444, which entered into effect in July 1999).

The recording industry reports that in 2006, Paraguayan courts issued 14 criminal judgments against pirates of sound recordings, but none resulted in effective incarceration. The recording industry is pleased to note that, in a landmark sanction against Happy Cruiser S.A., a blank optical disc plant in Paraguay was fined just over US\$1 million for unpaid taxes and fines. The sentence was a result of a year-long investigation conducted by the Specialized Intelligence Unit of Paraguay Customs Service, which aside from imposing the payment of back taxes and fines, has also remitted the case to the Paraguayan Tax authorities for further investigation.

**Delays in criminal cases and fears of leaks:** The recording industry notes that the Paraguayan courts do not resolve copyright cases in an expeditious manner. For example, the Santa Ana case has been lingering in the judicial system for over two years and has received fourteen postponements to date. Another example involves the indictment of a Chinese individual and his company, Neptune Technologies, for smuggling blank media into Paraguay. The individual was indicted for tax evasion, fraud and contraband but the case is still pending due to questionable postponements. A new development in 2007 is the case of a high profile Lebanese national. Six separate cases have been initiated against this individual over the past 18 months by the UTE. The last case brought in December 2007 involved the seizure of 1,200 burners. This gentleman is believed to be the prominent distributor of pirate music and film in the Paseo San Blas.

Industry also reports that there is a lack of cooperation among judges in Ciudad del Este. Orders to conduct raids have taken an inordinate time, during which key information about the target has been leaked, making searches and confiscations very difficult. For example, BSA reports that in one software case brought in Ciudad del Este in October 2007, a judge took eight hours to authorize a raid. By the time the authorities arrived at the target, it was too late; all the merchandise was gone.

The Paraguayan Government needs to understand that cases like this are tests for its judicial system. Raids, numerous though they may be, remain an inadequate deterrent absent follow-up investigations, the initiation of criminal prosecutions against pirates, and ultimately, the imposition of penalties as appropriate upon those found guilty of piracy. Judges and prosecutors would all benefit from further appropriate training intellectual property matters.

**Delays and low damages in civil cases:** BSA reports that in 2007, it carried out four civil *ex parte* actions in Asuncion City. Three cases involved judges and experts, and settlements were reached in which the defendants paid damages; the fourth case is still underway.

A continuing problem that BSA faces with civil enforcement is the sometimes unreasonable delay of some courts in granting *ex parte* search orders. In many cases, it can take a minimum of 45 days to obtain a civil warrant search. It takes an average of three years to reach a decision from a district court and an additional year if the case is appealed. Because the search warrants take so long to be issued, there is a danger of leaks. BSA has met with the President of the Supreme Court to suggest that new courts with exclusive jurisdiction for intellectual property infringements be created (like those courts that exist for Drug Corruption and Terrorism). The creation of such a court would be beneficial for the entire industry and specialized IPR training for these judges could be offered.

BSA also notes that some courts are issuing extremely low damages in infringement actions. One case from 2006 is currently on appeal for failure to follow specified due process procedures (which include notifying the victim and the complainants). In this particular case, a criminal fine of US\$750 (3,500,000 guaranies) in a case involving software seized with a value – if it had been a legitimate product – of almost US\$1 million.

## **COPYRIGHT LAW AND CRIMINAL CODE ISSUES IN PARAGUAY**

**Criminal code problems:** There are two principal problems with Paraguay's Criminal Code. First, Article 184 identifies cases involving acts infringing authors' rights (copyright). But it does not contain any provisions regarding the infringement of neighboring rights, the rights which protect producers of sound recordings. The criminal code therefore does not protect against acts of piracy involving sound recordings. This law in fact abrogated the penalties provided under an 1985 law (Law No. 1.174), which established relatively strong criminal prohibitions for piracy of sound recordings, and also clearly provided that the state could proceed *ex officio* against infringers. The recording industry continues to bring cases based on the copyright law, but bases the enforcement remedies on the criminal law as well as other violations (such as contraband, tax evasion, etc.), not copyright *per se*. Second, the current criminal code provides a penalty of up to three years or a fine. Unfortunately, this allows judges to impose either a fine or a prison sentence. This kind of choice will likely limit the deterrent effect of the law because convicted defendants could buy out, or convert, their jail time into fines. The current penalty of six months to three years for IPR violations prevents any effective deterrent sentences. In fact, one criminal code provision (article 321) does obligate judges to issue fines instead of incarceration for cases involving penalties of less than 6 months.

**Criminal code reform:** IIPA and its members have been working for years to try to fill the troubling gaps in the criminal code, strengthen enforcement remedies, increase penalties for copyright infringement, elevate copyright infringement to the level of major crimes. At various times, legislative proposals have been made to amend the copyright law, amend the criminal code, or amend both.

The most recent solution is based on a comprehensive criminal code effort ongoing in the Paraguayan Congress. Included in this large legislative package are specific provisions to amend the troubling Article 184, including: establishing *ex officio* actions in all piracy cases (including sound recordings); sanctioning the

circumvention of technological protection measures; setting higher penalties for organized crime cases; and increasing the upper limit of sanctions for piracy. Unfortunately, this bill does not include a minimum penalty for piracy that will allow judges to suspend or opt for fines. The amendment of article 184 of Penal Code was approved at the House and sent to the Senate. Support from the Executive Branch is needed to get the package to pass without further weakening of Article 184. Unfortunately, Article 184 amendments are part of a larger legislative consideration of the entire criminal code and its progress has been very slow.

**Copyright Law of 1998 and reform:** Almost a decade has passed since Paraguay adopted a new copyright law in 1998 (Law No. 1.328/98). Paraguay has deposited its instruments of ratification to both the WIPO Treaties—the WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty. In order to achieve the kind of comprehensive implementation desired by the copyright industries, further refinements to Paraguayan laws are necessary. For the time being, however, reform of the criminal code (above) is paramount.

The recording industry has also presented a project to extend the term of protection for works and phonograms from 50 to 70 years. Unfortunately the bill had been pending in the lower house for a long time, and has now fallen off the docket because the bill met with government opposition. Passage of this bill should be supported because it would provide authors, performers and producers with much needed protection.

**Possible regulations on mandatory collective management:** The Paraguayan Congress had considered a bill that would have replaced the current voluntary establishment of collecting societies with a mandatory government collective. Opposed by the recording industry, this bill was rejected. Recent reports indicate that the Copyright Office is planning to pursue this issue, and as a result, has drafted a regulation/decreed that it hopes will be promulgated by the Minister of Industry and Commerce. Among its many problems, four significant issues include:

- The creation of a centralized bureau to make all collections on behalf of authors, publishers, performers and producers. The Decree would propose that all rates will be fixed by the Government, not the rightsholders.
- The establishment of caps to all rates, so right holders would not be able to negotiate their own rights and to pursue future increases.
- The creation of a scheme of automatic discounts to all rates (up to 70% of the effective rate) when the broadcasters and other users of music advance some payments to the official body.
- The establishment of a mandatory distribution rule of 70% for copyright owners and 30% for neighboring rights owners on all collections.

Industry recommends that any regulatory decree on this matter, especially one which might follow the objectionable provisions in the earlier bill, not move forward.